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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES

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8 *Ex parte* GLENN R. GODLEY

9

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11 Appeal 2010-008083
12 Application 09/778,543
13 Technology Center 3700

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17 Before ANTON W. FETTING, BIBHU R. MOHANTY, and
18 MICHAEL W. KIM, *Administrative Patent Judges.*

19 FETTING, *Administrative Patent Judge.*

20 DECISION ON APPEAL

1 STATEMENT OF THE CASE¹

2 Glenn R. Godley (Appellant) seeks review under 35 U.S.C. § 134 (2002)
3 of a non-final rejection of claims 1, 2, 4-16, 18, and 19, the only claims
4 pending in the application on appeal. We have jurisdiction over the appeal
5 pursuant to 35 U.S.C. § 6(b) (2002).

6 The Appellant invented a way of teaching subjects such as animals and
7 children to vocally emulate prerecorded sounds (Specification 1:5-6).

8 An understanding of the invention can be derived from a reading of
9 exemplary claim 1, which is reproduced below [bracketed matter and some
10 paragraphing added].

11 1. An apparatus to teach a subject to vocally emulate sounds
12 comprising:

13 [1] a presence detecting sensor

14 for detecting the presence of a subject;

15 [2] a system for playing back a predetermined message,

16 wherein said system initiates playback of said
17 predetermined message

18 upon detection of the presence of said subject

19 by said presence detecting sensor;

20 and

¹ Our decision will make reference to the Appellant's Appeal Brief ("App. Br.", filed May 15, 2009) and the Examiner's Answer ("Ans.", mailed August 18, 2009).

1 [3] a housing
2 which contains
3 said sensor
4 and
5 said playback initiation system .

6 The Examiner relies upon the following prior art:

| | | |
|-------|-----------------|---------------|
| Hicks | US 3,847,120 | Nov. 12, 1974 |
| Lynch | US 5,568,792 | Oct. 29, 1996 |
| Yu | US 5,726,629 | Mar. 10, 1998 |
| Green | US 6,354,244 B1 | Mar. 12, 2002 |

7 Claims 1, 2, 4, 5, 9, 11, 12, 18, and 19 stand rejected under 35 U.S.C.
8 § 102(b) as anticipated by Hicks.

9 Claims 1, 4, 5, 8, and 19 stand rejected under 35 U.S.C. § 102(b) as
10 anticipated by Yu.

11 Claim 2 stands rejected under 35 U.S.C. § 103(a) as unpatentable over
12 Hicks and Lynch.

13 Claims 6-8 stand rejected under 35 U.S.C. § 103(a) as unpatentable over
14 Hicks and Yu.

15 Claims 10 and 13-16 stand rejected under 35 U.S.C. § 103(a) as
16 unpatentable over Hicks and Green.

1 ISSUES

2 The issues of anticipation and obviousness turn primarily on whether the
3 claimed presence detector is sufficiently broad to encompass the detectors in
4 the applied art.

5 FACTS PERTINENT TO THE ISSUES

6 The following enumerated Findings of Fact (FF) are believed to be
7 supported by a preponderance of the evidence.

8 *Facts Related to the Prior Art*

9 *Hicks*

10 01. Hicks is directed to a device for training birds to talk that
11 includes a recording playback unit that repeats spoken sounds.
12 Hicks 1:49-51.

13 02. Hicks has a playback unit that particularly encourages the bird
14 to learn to speak and is automatically operated when the bird is
15 attracted by his full-size reflection in a mirror mounted on the
16 device. Hicks 1:52-56.

17 03. Hicks has a housing having a front side panel having full-size
18 mirror that may be removable to expose the inside components
19 and for changing of a record. Hicks 2:55-60.

20 04. Hicks includes a perch adjacent the rear of the device. One side
21 of the perch cooperates with a microswitch by a lever. When a
22 bird flies up and alights on the perch, this switching action
23 activates the tape playback unit and causes sounds to emerge from
24 a speaker. Hicks 2:61 – 3:10.

1 *Yu*

2 05. Yu is directed to an electrical illumination and sound device
3 using a lighting fixture with motion detector connected to an
4 announcement device for indoor or outdoor uses. When
5 something enters an area and is detected by the motion detector,
6 the motion detector causes the lighting fixture to turn on and the
7 announcement device to playback an announcement or a message.
8 Yu 1:33-54.

9 06. Yu uses an infrared heat sensor for detection. Yu 2:26-34.

10 *Lynch*

11 07. Lynch is directed to a bird training device training a bird to
12 repeat words. Lynch 1:5-6.
13 08. Lynch describes a selector switch for selecting record or
14 playback mode. Lynch 5:13-20. Recording a sound inherently
15 chooses the sound that is recorded.

16 *Green*

17 09. Green is directed to outdoor accessories such as bird feeders
18 for displaying accessories such as bird houses. Green 1:11-14.
19 10. Green has a filing date of September 16, 1999.

1 ANALYSIS

2 *Claims 1, 2, 4, 5, 9, 11, 12, 18, and 19 rejected under 35 U.S.C. § 102(b) as*
3 *anticipated by Hicks.*

4 We are not persuaded by the Appellant's argument that what is disclosed
5 in Hicks is not a sensor but a mechanical lever sensitive to the weight of a
6 bird. Appeal Br. 9. Hicks uses a lever that senses a presence by being
7 pivoted by the bird's weight. FF 04. Appellant provides no lexicographic
8 definition of sensor other than it be presence detecting.

9 We are not persuaded by the Appellant's argument that claims 9 and 10
10 are separately patentable because the perch is detachable. These claims
11 recite a perch that is detachable. Appellant contends that the perch
12 terminates the presence sensing mechanism when detached. This argument
13 is not commensurate with the scope of the claim, as the claim is a structural
14 one merely reciting the presence detector without specifying that it must
15 operate at all times. Hicks' lever is operable when the perch is attached.

16 *Claims 1, 4, 5, 8, and 19 rejected under 35 U.S.C. § 102(b) as anticipated by*
17 *Yu.*

18 We are not persuaded by the Appellant's argument that the claims are
19 toward a presence detector and initiation of playback of the prerecorded
20 message based on the presence of an object; and that motion is distinct from
21 presence, as the mere presence of an object in an area would not necessarily
22 trigger the motion detector. Appeal Br. 10. Clearly if an object creates
23 motion, it is present. Thus, its presence is detected. The claim does not
24 narrow the aspects of presence that are appreciated by the detector. Any

1 technology that detects that something is present is within the scope of the
2 claim.

3

4 *Claim 2 rejected under 35 U.S.C. § 103(a) as unpatentable over Hicks and*
5 *Lynch.*

6 We are not persuaded by the Appellant's argument that Hicks fails to
7 describe the claimed selector switch for choosing a desired prerecorded
8 sound . Appeal Br. 15. The Examiner applies Lynch for this limitation.

9 *Claims 6-8 rejected under 35 U.S.C. § 103(a) as unpatentable over Hicks*
10 *and Yu.*

11 We are not persuaded by the Appellant's argument that Hicks fails to
12 describe different detecting sensors, one having a light sensing device, one
13 having a laser and laser detect ion sensor, and one having a heat sensing
14 device, respectively. Appeal Br. 16. The Examiner applied Yu and official
15 notice for these limitations. Yu explicitly describes the claimed heat and
16 light sensors as Yu describes detecting infrared light and heat, and the
17 Examiner found that those of ordinary skill knew that a laser detector was a
18 predictable alternative.

19 *Claims 10 and 13-16 rejected under 35 U.S.C. § 103(a) as unpatentable*
20 *over Hicks and Green.*

21 We are not persuaded by the Appellant's argument that Green has an
22 issue date of March 12, 2002, subsequent to the instant application filing
23 date of February 7, 2001 and is non-analogous art. Appeal Br. 17. Green

- 1 has a filing date of September 16, 1999. Green is directed toward displaying
2 devices for attracting birds such as those trained by Hicks.

3 CONCLUSIONS OF LAW

4 The rejection of claims 1, 2, 4, 5, 9, 11, 12, 18, and 19 under 35 U.S.C.
5 § 102(b) as anticipated by Hicks is proper.

6 The rejection of claims 1, 4, 5, 8, and 19 under 35 U.S.C. § 102(b) as
7 anticipated by Yu is proper.

8 The rejection of claim 2 under 35 U.S.C. § 103(a) as unpatentable over
9 Hicks and Lynch is proper.

10 The rejection of claims 6-8 under 35 U.S.C. § 103(a) as unpatentable
11 over Hicks and Yu is proper.

12 The rejection of claims 10 and 13-16 under 35 U.S.C. § 103(a) as
13 unpatentable over Hicks and Green is proper.

14 DECISION

15 The rejection of claims 1, 2, 4-16, 18, and 19 is affirmed.

16 No time period for taking any subsequent action in connection with this
17 appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R.
18 § 1.136(a)(1)(iv) (2007).

19
20 AFFIRMED
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Appeal 2010-008083
Application 09/778,543

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2 JRG